IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 30TH JULY 2007 / 8TH SRAVANA 1929

WA.No. 490 of 2006(D)

(AGAINST THE JUDGEMENT IN W.P.(C).NO.3595/2006 DATED 24/02/2006)
.....

APPELLANT/PETITIONER:

K.M.SIRAJ, S/O.MAKKAR KUNJU,
KOTTAPPURATH HOUSE,
CHERANELLUR.P.O, COCHIN-34.

BY ADV. SRI.P.RAVINDRAN.

RESPONDENTS/RESPONDENTS:
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1. THE REGIONAL TRANSPORT OFFICER,
ERNAKULAM.

2. GOVERNMENT OF KERALA,
REP. BY ITS CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

***ADDL.R3.THE CHIEF EXECUTIVE OFFICER,**
KERALA MOTOR TRANSPORT WORKERS WELFARE
FUND BOARD, BEACH ROAD, KOLLAM.

***ADDL. R3. IS IMPLEADED AS PER ORDER DATED 12/05/2006**
IN I.A. 596/2006.

BY GOVERNMENT PLEADER SRI. MATHEW G. VADAKKEL FOR R1 & R2,
ADV. SRI.ELVIN PETER P.J. FOR ADDL.R3,
ADV. SRI.P.N.SANTHOSH.

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 13/06/2007,
ALONG WITH W.P.(C). NO. 6545/2006 AND CONNECTED CASES,
THE COURT ON 30/07/2007, DELIVERED THE FOLLOWING:

K.S. RADHAKRISHNAN & ANTONY DOMINIC, JJ.

W.A.No 490 of 2006
and
W.P.C. Nos. 6545, 9491, 6384, 11080, 10915,
10959, 10067, 11787, 6063, 10111, 4989, 9971, 10636
10969, 11362, 12546, 12769, 19351, 2999 and 3132 of 2006
26596, 26598 and 27734 of 2005 and 3905 of 2007

Dated: 30th July 2007

JUDGMENT

Radhakrishnan, J.

Constitutional validity of sub-sections (7) and (8) of Section 4 of the Kerala Motor Vehicle Taxation Act, 1976, introduced by the Motor Vehicle Taxation (Amendment) Act, 2005, Act 24 of 2005 and Section 15 of the Act are under challenge before us on the ground that they are inconsistent with the provisions of Section 81 of the Motor Vehicles Act, 1988 and are also vitiated by colourable exercise of power and hence unconstitutional and void.

2. Petitioners are aggrieved by the insistance for the production of certificate of remittance of contribution under the Kerala Motor Transport Workers Welfare Fund Act, 1985 as a pre condition for receiving motor vehicle tax under the Motor Vehicles Taxation Act. Sub-section (7) of Section 4 of the Motor Vehicles

Taxation Act stipulates that proof of remittance of contribution to the Motor Transport Workers Welfare Fund upto the preceding month should be produced for receipt of motor vehicle tax. Sub-section (8) states that no tax under the Act shall be collected unless the receipt of remittance of contribution towards welfare fund as stated in sub-section (7) is produced. Petitioners submit that Act 24 of 2005 which has brought in sub-sections (7) and (8) of Section 4 to the Kerala Motor Vehicles Taxation Act is unconstitutional since no Presidential assent under Article 304 (b) was obtained before introducing those sections and is in direct conflict with Section 81 of the Motor Vehicles Act, 1988.

3. Petitioners point out that Section 15 of the Motor Vehicles Taxation Act, 1976 was inconsistent with Section 58 of the Motor Vehicles Act, 1939, consequently Presidential assent was obtained on 15.03.1976 so as to sustain Section 15 of the Taxation Act. Motor Vehicles Act, 1939 was repealed by the Motor Vehicles Act 1988 but similar Presidential assent was not obtained to sustain Section 15 of the Taxation Act vis-a-vis Section 81 of the Motor Vehicles Act, 1988 and hence Section 15 of the Taxation Act is unconstitutional.

4. Petitioners further submitted that Motor Vehicles Taxation Act is a State legislation enacted in exercise of the powers conferred under entries 56 and 57 of List II for bringing a legislation for levy of motor vehicles tax. Motor Vehicles Act is a regulatory legislation enacted as per entry 35 of List III and the provisions of the Motor Vehicles Taxation Act, petitioners submit, to the extent they result in suspension of the stage carriage permit for the period where tax is in arrears is illegal and repugnant to the provisions of the Motor Vehicles Act, 1988 and would interfere with the petitioners' fundamental right guaranteed under Article 19 (1) (g) for operating the stage carriages. Petitioners submit that a stage carriage permit granted under Section 72 of the Motor Vehicles Act is to be valid for a period of five years under Section 81 (1) of the Act and sub-sections (7) and (8) of Section 4 of the Motor Vehicles Taxation Act would result in amending Section 81 of the Motor Vehicles Act, 1988. Petitioners submit, the above mentioned amended provisions which indirectly affect Section 81 of the Motor Vehicles Act, 1988 is a colourable legislation.

5. Petitioners referred to Article 246 of the Constitution of India and submitted that the Union and State Legislations should be

confined to the respective fields earmarked for them under the VII Schedule and Article 254 makes it clear that a law made by the State legislature, if it is inconsistent with the provisions of a parliamentary legislation, the State law to the extent of its inconsistency would be void. Petitioners also pointed out that sub-sections (7) and (8) of section 4 of the Motor Vehicles Taxation Act causes restriction on trade, commerce and intercourse as envisaged under Article 304 of the Constitution of India. Petitioners submit that in order to bring in a legislation of this nature Presidential assent as provided under Article 304 (b) is necessary. Petitioners further submit that the finding that the requirement of Article 304(b) was satisfied when the Presidential assent was obtained for the Motor Vehicle Taxation Act in the year 1975 is not sustainable.

6. Petitioners submitted that Motor Vehicle Taxation Act is a legislation made for the levy and collection of tax on motor vehicles, enacted by virtue of entries 56 and 57 of List II, while Kerala Motor Transport Workers Welfare Fund Act is a State legislation falling under entries 23 and 24 of List III and the impugned provisions are inconsistent and vitiated by colourable exercise of powers.

7. Counsel appearing for the contesting respondents submitted

that there is no repugnancy between the provisions of Section 81 of the Motor Vehicles Act and sub-sections (7) and (8) of Section 4 of Act 24 of 2005. Counsel submitted that Motor Vehicles Act 1988 provides for regulation of operation of vehicle and registration of vehicle etc. Since the legislations fall under different lists there is no repugnancy between the two legislations and therefore no assent of the President is required under Article 254 (2) of the Constitution. In support of the contention reference was made to the decisions of the apex court in M.P.V. Sundararamier & Co. v. State of Andhra Pradesh (AIR 1958 SC 468), State of U.P and another v. Synthetics and Chemicals Ltd and another (1991 (4) SCC 139) and M/s Hoechst Pharmaceuticals Ltd v. State of Bihar (AIR 1983 SC 1019). Counsel also submitted that the Motor Vehicles Act has already received the assent of the President and there is no other Act promulgated by the Central Government on that subject and that assent of the President was given for the Motor Workers Welfare Fund Act, not for the purpose of Article 254, but for the purpose of Article 304(b) of the Constitution. Contesting respondents also pointed out that Act 23 of 2005 was promulgated as a regulatory measure laying down the mode of recovery of such contribution and it is well within the

prerogative of the State Legislature and cannot be struck down on the plea that it is contrary to Article 245 of the Constitution of India.

8. The Kerala Motor Transport Workers' Welfare Fund Act, 1985 is an Act to provide for the constitution of a Fund to promote the welfare of motor transport workers in the State of Kerala which has received the assent of the President of India. Section 9 of the Act states that every employer shall, pending determination under Section 8 of the amount due from him, pay every month by way of advance contribution an amount equivalent to one-twelfth of the amount payable annually in respect of his motor transport undertaking. In order to properly manage; the fund Kerala Motor Transport Workers Welfare Fund Board was created and the Board consists of representatives of the employees and representatives of the Government. Welfare fund scheme it is alleged was being effectively defeated by non payment of contribution by the employers. Many of the employers did not co-operate with the enquiry for determining the liability and only a very few of them remitted their contribution in time. This court in O.P.No 7440 of 2003 filed by the Kerala Private Bus Operators' Federation noticed the serious problem faced by the State and the Board due to the incalcitrant

attitude of the operators and opined that the problems could be sorted out if standard rates are fixed for every bus depending on the number of employees and a regular pattern of remittance of contribution by the employer similar to the payment of tax without any necessity of dispute and adjudication by the Welfare Fund Board. The court also directed the Labour Secretary to consider the matter after taking up the issue with the Transport Commissioner or higher officers of the Government and take a decision and necessary amendments could be made in the statute to achieve its objects. Matter was discussed at the highest level and it was decided to amend the Kerala Motor Transport Workers Welfare Fund Act and the Scheme. Consequently Section 8A was introduced to the Welfare Fund Act which obliges every registered owner having possession or control in respect of a transport vehicle to pay contribution and to produce before the taxing officer receipt of remittance of contribution to the Fund due upto the preceding month at the timeof payment of tax under the Kerala Motor Vehicles Taxation Act 1976.

9. The Kerala Motor Vehicles Taxation Act 1976 was also amended by Act 24 of 2005 by which sub-sections (7) and (8) were

added to Section 4 of the Act requiring payment of contribution towards the welfare fund as a condition precedent for acceptance of motor vehicle tax under the Motor Vehicles Taxation Act. Petitioners, as we have already indicated, are aggrieved by the introduction of sub-sections (7) and (8) of Section 4 of the Kerala Motor Vehicles Taxation Act 1976 which according to them is violative of Article 19 (1)(g) as well as Article 301 of the Constitution. They have also stated that those legislations would not stand due to lack of Presidential assent under Article 254 (2) of the Constitution of India and also highlighted the necessity of getting the Presidential assent under Article 304(b) of the Constitution as well.

10. The Kerala Motor Transport Workers' Welfare Fund Act, 1985 (Act 21 of 1985) is an Act enacted by the State Legislature to provide for the constitution of a Fund to promote the welfare of motor transport workers in the State of Kerala which has received the assent of the President. The Act falls under entries 23 and 24 of List III of VII Schedule. Entries are extracted herein for easy reference.

> 23. Social security and social insurance; employment and unemployment.
>
> 24. Welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation,

invalidity and oldage pensions and maternity benefits.

Government in exercise of the powers conferred by sub-section (1) of Section 3 of the Kerala Motor Transport Workers' Welfare Fund Ordinance, 1985 (38 of 1985) framed the Kerala Motor Transport Workers' Welfare Fund Scheme, 1985, which later became the Act. Section 3 of the Act states that the Government may by notification in the gazette frame a scheme to be called “the Kerala Motor Transport Workers Welfare Fund Scheme” for the establishment of a Fund under the Act for the employees and such a fund has already been constituted. Section 6 of the Act authorises the Government to constitute a Board called “the Kerala Motor Transport Workers' Welfare Fund Board” for the administration of the fund and to supervise or carry out the activities financed from the Fund. As per Section 9 of the Act employer is bound to make advance contribution towards the fund. Section 8 of the Act authorises the Chief Executive Officer or any other officer appointed under sub-section (1) of Section 7 to determine the amount due from the employer, employee and self-employed person and if the amount due is not paid on or before the due date, he shall issue a demand notice

to the defaulter showing the amount of arrears. Section 8A was thus inserted by the Kerala Motor Transport Workers' Welfare Fund (Amendment) Act 2005. For easy reference we may extract Section 8.

> 8. Determination of amount due (1) - The Chief Executive Officer or any other officer appointed under sub-section 7 authorised by him in this behalf may, by order, determine the amount due under the provisions of this Act or of the Scheme from the employer, employee and self-employed person and if the amount due is not paid on or before the due date, he shall issue a demand notice to the defaulter showing the amount of arrears.
>
> (2) Any person aggrieved by the determination of arrears under sub-section (1) may file a review petition before the authority who had determined the arrears, showing detailed facts and reasons for reviewing the original determination within fifteen days of receipt of demand notice.
>
> (3) A review petition filed under sub-section (2) shall be disposed of by the authority within a period of thirty days from the date of its receipt.
>
> (4) Any person aggrieved by an order under sub-section (3) may prefer an appeal before the District Labour Officer of the concerned district and it shall be disposed of by him within a period of sixty days from the date of its receipts.
>
> (5) If the amount of arrears in dispute exceeds rupees one lakh, any person aggrieved by an order under sub-section (4) may prefer a second appeal before the Board and it shall be disposed of within a period of sixty days from the date of its receipt.
>
> (6) Every order passed under sub-section (4) or sub-section (5), as the case may be, shall be final.
>
> (7) No appeal under this section shall be entertained unless fifty per cent of the amount in accordance with the order against which the appeal has been preferred is paid.
>
> (8) If the appellate authority in an appeal decides that the

> amount paid is in excess of what is due from the appellant, it may, by order, direct for the refund of the excess amount.
>
> (9) An officer or authority exercising the power of appeal under sub-section (5) of Section 8 of the Kerala Motor Transport Workers' Welfare Fund Act, 1985, immediately before the commencement of the Kerala Motor Transport Workers' Welfare Fund (Amendment) Act, 2005 shall continue to exercise such powers, in respect of the cases pending before such officer or authority.

Section 8 therefore enables a person aggrieved; by the determination orders under sub-section (1) to file review petition before the authority who had determined the arrears showing detailed facts and reasons for reviewing the original determination within fifteen days of receipt of demand notice. Sub-section (3) of Section 8 states that the review petition filed under sub-section (2) shall be disposed of by the authority within a period of thirty days from the date of receipt of the petition. Sub-section (4) of Section 8 enables the aggrieved person to file appeal before the District Labour Officer of the concerned district and it shall be disposed of by him within a period of sixty days from the date of receipt. If the amount of arrears in dispute exceeds rupees one lakh, any person aggrieved by an order under sub-section (4) may prefer a second appeal before the Board and it shall be disposed of within a period of sixty days from the date of its receipt. Sub-section (7) of Section 8 says that no appeal under

the Section shall be entertained unless fifty per cent of the amount in accordance with the order against which the appeal has been preferred is paid. Section 8A is also relevant for our purpose and it reads as follows:

> 8A. Production of receipt of remittance of welfare fund contribution - Notwithstanding anything contained in any other law for the time being in force, every registered owner or person having possession or control of a motor vehicle in respect of a motor transport undertaking liable to pay cointribution (other than autorickshaws covered under the provisions of the Kerala Autorickshaw Workers' Welfare Fund Scheme, 1991) shall, at the time of making payment of the tax under the Kerala Motor Vehicles Taxation Act, 1976 (19 of 1976) produce before the Taxation Officer the receipt of remittance of the contribution to the fund due upto the preceding month.

The stand of the State Government as well as that of the Board was that even though the Act was enacted to provide for the constitution of a fund to promote welfare of motor transport workers in the State it was noticed that majority of the employers were not giving contributions to the fund. Many of them adopting money evading practices exploiting loop holes in the Welfare Fund Act by preparing bogus partnership agreements pretending that employees themselves are the employers and were not paying contribution. Only few of the employers used to maintain proper registers and

muster roll prescribed under the Act. In order to safeguard the interest of the motor transport workers and at the same time reducing the arbitrariness in fixing the contribution to be made by the employers/self employed towards welfare fund, detailed discussions were held at the level of the Minister (Labour) with the different trade Unions and Association of motor vehicle owners and also with the Secretary (Transport), Transport Commissioner and it was in principle decided to amend the Kerala Motor Vehicles Transport Workers Welfare Fund and the Scheme. Main complaint was regarding the contribution to the Welfare Fund Board, consequently Welfare Fund Scheme was amended and the employer or self employed person of a motor transport undertaking has to contribute to the fund in respect of his undertaking an amount of quantum for each type of vehicle as shown in Tables I to IV every month as employers contribution taking into account the average minimum number of employees fixed for each such vehicle. It is to achieve the aforesaid object and to ensure payment of contribution the Kerala Motor Transport Workers Welfare Fund Act and the Scheme thereunder and the Kerala Motor Vehicles Taxation Act were amended.

11. The Kerala Motor Vehicles Taxation Act, 1976 was enacted by the Government to consolidate and amend the laws relating to the levy of tax on motor vehicles and on passengers and goods carried by such vehicles in the State of Kerala. The Kerala Motor Vehicles Taxation Act, 1976, in short the Taxation Act, falls under entry 57 list II of the State List which is extracted hereunder for easy reference.

> "Taxes on vehicles, whether mechanically propelled or not, suitable for use on roads, including tram cars subject to the provisions of Entry 35 of List III"

Entry 35 of List III is also extracted hereunder for easy reference.

> "Mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied."

Under Entry 35 of the concurrent list Parliament as well as the State Legislature can legislate in respect of mechanically propelled vehicles including the principles on which taxes on such vehicles are to be levied. Entry 57 of List II is solely concerned with taxes on vehicles, mechanically propelled or not. Entry 35 of List III deals with vehicles which are mechanically propelled and also the principles on which taxes on such vehicles are to be levied. State

Legislature as per the Act has been empowered to levy different rates of tax on motor vehicles. Section 3 of the Act deals with levy of tax on all motor vehicles which are specifically designed for use on roads at the prescribed rates. Registered owner or any person in control of the vehicle is statutorily obliged to pay tax in advance and the owner or any person having possession or control of the motor vehicle be deemed to use or keep such vehicle for use in the State, except during any period for which no tax is payable. Section 15 of the Act states that the transport vehicle permit to be ineffective if tax is not paid. Section 15 is extracted below for easy reference.

> 15. Transport vehicle permit to be ineffective if tax not paid. Notwithstanding anything contained in the Motor Vehicles Act, 1939 (Central Act 4 of 1939) if the tax due in respect of a transport vehicle is not paid within the prescribed period, the validity of the permit for that vehicle shall become ineffective from the date of expiry of the said period until such time as the tax is actually paid.

Section 4 of the Taxation Act deals with payment of tax and issue of licence. Section 4 enjoins every registered owner or person having possession or control of the motor vehicle to pay tax in advance

within such period and in such manner as may be prescribed. In short, Section 4 regulates payment of tax payable under Section 3 of the Taxation Act. Section 4 was amended inserting sub-sections (7) and (8) to that Section by Motor Vehicles Taxation Amendment Act, 2005 (Act 24 of 2005). The amended provisions read as follows:

> (7) Notwithstanding anything contained in any other provisions of this Act, every registered owner or person having possession or control of a motor vehicle in respect of a motor transport undertaking liable to pay contribution under the Kerala Motor Transport Workers' Welfare Fund Act, 1985 (21/1985) shall, before effecting payment of tax produce before the Taxation Officer the receipt of remittance of the contribution towards welfare fund due upto the preceding month.
>
> (8) No tax under this Act shall be collected unless the receipt of remittance of contribution towards welfare fund mentioned in sub-section (7) is produced."

By virtue of insertion of sub-sections (7) and (8) to Section 4 it has become obligatory on the part of every registered owner or person having possession or control of a motor vehicle to produce before the taxing officer proof of remittance of contribution towards welfare

fund under the Welfare Fund Act upto the preceding month. Authority acting under the Taxation Act is obliged to receive tax under the Taxation Act only if proof of remittance of contribution towards welfare fund is produced. Further under section 15 of the Taxation Act, if tax due under the Act is not paid within the prescribed period, the validity of the permit of the vehicle shall be ineffective from the date of expiry of such period until such time tax is actually paid. Combined effect of sub-sections (7) and (8) of Section 4 of the Taxation Act and Section 15 is that if a clearance certificate is not obtained from the assessing officer under the Welfare Fund Act, motor vehicle tax would not be received and consequently permit would be rendered ineffective. Consequently owner of a stage carriage cannot operate his vehicle even though he has a valid stage carriage permit granted in accordance with the provisions of the Motor Vehicles Act, 1988.

12. The Motor Vehicles Act, 1988 is an Act enacted by the Parliament on subjects falling under entry 35 of List III. Section 81 of the Act deals with duration and renewal of permits. Sub-section (1) of Section 81 says that a permit other than a temporary permit issued under section 87 or a special permit issued under sub-section

(8) of Section 88 shall be effective from the date of issuance or renewal thereof for a period of five years. The Taxation Act falling under entry 57 List II of VII Schedule, is solely concerned with tax on vehicles whether mechanically propelled or not while Welfare Fund Act which is also a State Legislation falls under entries 23 and 24 of List III for promoting the welfare of motor transport workers. Petitioners submit that while exercising powers under entry 57 List II State Legislature has no power to import a subject covered by entries 23 and 24 of List III to that of Taxation Act enacted under entry 57 of List II. Petitioners point out that those two legislations operate in different fields. Petitioners contend that Act 24/05 to the extent it introduces sub-sections (7) and (8) of Section 4 of the Taxation Act, 1976 is ultra vires the law making power of the legislature, thereby unconstitutional and void and vitiated by colourable exercise of legislative power.

13. Petitioners also contended that by the introduction of sub-sections (7) and (8) to Section 4 of the Taxation Act and also Section 8A to the Welfare Fund Act,right to file review under sub-section (2) of section 8 and to agitate against an order of review in appeal under sub-section (5) of section 8 has been effectively defeated. Petitioners

submit that they have to wait for the outcome of the review petition or the appeal, as the case may be for receipt of tax under Section 4 (1) of the Act and tax would be received only if they produce certificate of payment of tax before the taxing authority under the Taxation Act evidencing proof of remittance of contribution towards welfare fund under the Welfare Fund Act. In short, the entire amount as determined by the Chief Executive Officer under Section 8 (1) of the Act has to be paid for getting a certificate of remittance of tax under the Taxation Act and unless tax is paid permit would not be renewed under Section 81 of the Motor Vehicles Act. Right to file appeal, according to the petitioners, is a statutory right conferred on them under the Welfare Fund Act and that right has been effectively taken away by introducing sub-sections (7) and (8) to section 4 of the Taxation Act which, according to the counsel, is a colourable exercise of power.

14. Counsel for the Welfare Fund Board also submitted that right to file review or to file appeal under the Welfare Fund Act has not been taken away by sub-sections (7) and (8) of Section 4 of the Taxation Act. If petitioners have got any dispute with regard to the determination made under Section 8 they can still pursue their

review as well as appeal. Counsel submitted that in order to mitigate the hardship if any caused to the employers, Circular dated 16.06.2007 was issued by the Government of Kerala directing the concerned District Executive Officers/Additional District Executive Officers of the Welfare Fund Board to issue a receipt to the motor vehicle owners who have availed of their remedy of appeal evidencing payment of 50% of the contribution due under the Welfare Fund Act for the purpose of enabling them to pay tax under the Taxation Act subject to the orders to be passed in the appeal filed by them. Government have also directed the concerned Taxation Officer to accept tax of motor vehicles on the strength of the receipt issued.

15. Petitioners, as we have already indicated, raised a contention, (later given up) that Section 15 of the Taxation Act is repugnant to Section 81 of the Motor Vehicles Act, 1988. Such a contention was answered by the learned single judge stating that Presidential assent was given on 25.03.1976 to the Taxation Act and therefore that contention would not hold good. Reasoning adopted by the learned single judge, in our view, is not correct. Learned judge repelled the challenge of inconsistency between Section 15 of

the Taxation Act and Section 81 of the Motor Vehicles Act, 1988 on the ground that Presidential assent was obtained on 25.03.1976 losing sight of the fact that Presidential assent was obtained as required under the proviso to Article 304 (b) of the Constitution of India; so as to sustain Section 15 of the Taxation Act vis-a-vis Section 58 of the Motor Vehicles Act, 1939. But Motor Vehicles Act, 1939 has already been repealed by Motor Vehicles Act, 1988. On this issue we do not labour much since we have already indicated that counsel for the petitioners did not seriously press the contention regarding conflict between Section 15 of the Taxation Act and Section 81 of the Motor Vehicles Act. However, we may point out that Section 15 has to be suitably amended to substitute 1939 Act by Motor Vehicles Act, 1988. In any view, the constitutionality of boith the legislations has to be upheld applying the doctrine of pith and substance, assuming that there is any encroachment on the respective legislative fields.

16. We have already indicated that the principal contention raised by the counsel is with regard to the restriction imposed for receipt of tax under the Taxation Act, i.e., production of certificate of payment of contribution towards welfare fund under the Welfare Fund

Act and to that extent petitioners submit there is inconsistency between the provisions of sub-sections (7) and (8) of Section 4 and Sections 8 and 8A of the Welfare Fund Act. On going through the entries we are of the view both the Taxation Act as well as the Welfare Fund act fall substantially within the powers expressly conferred upon the State Legislature which enacted both the legislations. Merely because Taxation Act has also dealt with a subject which falls under entries 23 and 24 of List III of the concurrent list it cannot be held that the provisions of the Taxation Act are bad in law.

17. The apex court in State of Bombay v. F.N. Balsara (AIR 1951 S.C. 318) held that if an Act when so viewed substantially falls within the powers expressly conferred upon the legislature which enacted it then it cannot be held to be invalid solely because it incidentally encroaches another legislation. The court held that in such matters what is more important is the principal nature and character of the legislation. Once it is found that in pith and substance an impugned Act is a law on the permitted field incidental encroachment in a forbidden field does not affect the competence of the legislature to enact such a law. In this connection it is apposite

to refer to the decision of the Privy Council in Prafulla Kumar Mukherjee v. Bank of Commerce Ltd.(AIR 1947 P.C. 60). Referring to the decision of the Federal Court in Subrahmanyan Chettiar v. Muttuswami Goundan (AIR 1941 F.C 47) the Privy Council observed that it must inevitably happen from time to time that legislature though purporting to deal with a subject under one list falls also in another list and the different provisions of the enactment may also be intervened. The apex court in M.Karunanidhi's case (AIR 1979 SC 898) held that law passed by the legislature while being substantially within the scope of entries in the State list entrenches upon any of the entries in the central List the constitutionality of the law may be upheld by invoking the doctrine of pith and substance if on an analysis of the provisions of the Act it appears that by and large the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential. In every case where the legislative competence of a legislature is challenged referring to the entries it is necessary to examine the substance of the Act and find out if substantially it will fall within the item in the list. We are therefore of the view that mere fact that by sub-sections (7) and (8) of Section 4 of the Taxation Act cast an

obligation on the employer to produce certificate of remittance of contribution under the Welfare Fund Act so as to receive tax under the Taxation Act it cannot be said that the said sub-sections (7) and (8) of Section 4 are invalid or beyond the legislative competence of State Legislature which enacted the Taxation Act under entry 57 List II.

18. Petitioners, as we have already indicated, have raised a contention that because of the introduction of sub-sections (7) and (8) to Section 4 of the Taxation Act, remedy of filing a review as well as appeal under Section 8 of the Welfare Fund Act has been effectively curtailed. Sub-section (2) of Section 8 enables a person to file a review petition before the authority who had determined the arrears showing the detailed facts and reasons for reviewing the original determination. Right is also conferred on the aggrieved party if he is dissatisfied with the order passed by the authority on the review petition to file appeal before the District Labour Officer of the concerned district. To maintain an appeal he need remit only 50% of the amount demanded. The above right to file review or appeal has been effectively taken away by sub-sections (7) and (8) of Section 4 that is, only on production of certificate of payment of contribution the

officer will accept tax. We have already indicated that a Circular dated 16.06.2007 has been issued by the Government of Kerala directing to issue receipt of 50% of the contribution due under the Welfare Fund Act enabling the aggrieved person to pay tax. Therefore an aggrieved party who files an appeal on payment of 50% of the contribution under the Welfare Fund Act is entitled to get a certificate to that effect and on production of that certificate before the taxing authorities he would receive tax. Circular of course does not deal with review petition. We therefore order that if a properly constituted review petition is filed within the prescribed time, and the same is pending the Chief Executive Officer or any other officer appointed under section 8 of the Welfare Fund Act that officer has to issue a certificate to that effect and on production of that certificate the taxing authority should receive tax under the Taxation Act. The right to file a review as well as an appeal is therefore effectively protected.

19. We therefore hold that sub sections (7) and (8) of Section 4 of Act 24 of 2005 is constitutionally valid; so also Section 8A introduced under the Welfare Fund (Amendment) Act. However, we hold if a review petition filed under sub-section (2) of Section 8 as

well as appeal filed under Section 4 read with Section 7 is pending consideration before the authorities concerned, they are obliged to issue a certificate during the pendency of the review petition and if an appeal is pending and pre condition for filing appeal has been satisfied, certificate has to be issued by the appellate authority and if those certificates are produced before the taxing authority they would receive tax under the Taxation Act. The writ appeal and the writ petitions are disposed of accordingly.

Sd/-

K.S. RADHAKRISHNAN
Judge

Sd/-
ANTONY DOMINIC
Judge

30/07/2007
en

[true copy]

W.P.C. No 6545 of 2006

Appendix

Petitioner's exhibits:

Ext. P1 True copy of amendment brought into Sec.4

[true copy]

W.PC. No 9491 of 2006

Appendix

Petitioner's exhibits:

Ext.P1 - True copy of notification G.O.(P) No 59/05/LBR dated 7.6.2005

Ext.P2 - True copy of the notification G.O.(P) No 98/05/LBR dated 26.11.2005

Ext.P3 - True copy of the Kerala Motor Vehicles Taxation (Amendment) Act 2005 dated 12.8.2005

[true copy]\

W.P.C. No 6384 of 2006

Appendix

Petitioner's exhibits:

Ext.P1 - True copy of amendment brought into Sec. 4

[true copy]

W.P.C. No 11080 of 2006

Appendix
Petitioner's exhibits:
Ext.P1 - True copy of registration certificate licence and badge of first petitioner.
Ext.P2 - True copy of permit along with the renewal certificate of vehicle No KL-9/C 8089 issued by the Secretary, Regional Transport Authority, Palakkad
Ext.P3 - True copy of permits of vehicle Nos. KL-9/J 3355, KL-9/F7677 and KL-9/K. 6163 issued by the Secretary, Regional Transport Authority, Palakkad
Ext.P4 - True copy of the permit in vehicle No KL 9/M 189 issued by the Secretary, Regional Transport Authority, Palakkad
Ext.P5 - True copy of the permit in vehicle No KL-9/T 687 issued by the Secretary, Regional Transport Authority, Palakkad
Ext.P6 - True copy of the permit in vehicle No KL 9/M 399 issued by the Secretary, State Transport Authority, Thiruvananthapuram
Ext.P7 - True copy of the certificate of registration of vehicle No KL-9/S 7455 issued by the Secretary, Regional Transport Authority, Palakkad
Ext.P8 - True copy of the permit in vehicle No KL 9/H.8222 issued by the Secretary, Regional Transport Authority, Palakkad
Ext.P9 - True copy of permit in vehicle No KL-9/S.829 issued by the Secretary, Regional Transport Authority, Palakkad
Ext.P10 - True copy of the permit in vehicle No KL 9/Q 3430 issued by the Secretary, Regional Transport Authority, Palakkad
Ext.P11 - True copy of the permit in vehicle No KL 9/F 7495 issued by the Secretary, Regional Transport Authority, Palakkad
Ext.P12 - True copy of permit in vehicle No KL 7/AM 6888 issued by the Secretary, RTA, Palakkad
Ext.P13-True copy of the certificate of registration of vehicle KL-9/D 7484 issued by the secretary, State Transport Authority, Thiruvananthapuram
Ext.P14 - True copy of permit in vehicle Ni LL-9/S 1585 issued by the Secretary, Regional Transport Authority, Palakkad
Ext.P15 - True copy of the registration certificate of vehicle No KRP 7549 issued by the Secretary, RTA Palakkad
Ext.P16 - True copy of permit in vehicle No KL 9/Q818 issued by the sEcretary, State Transport Authority, Thiruvananthapuram
Ext.P17 - True copy of permit in vehicle No KL 9/P620 issued by the Secretary, Regional Transport Authority, Palakkad
Ext.P18 - True copy of permit in vehicle No KL 9/B 6969 issued by the Secretary, Regional Transport Authority, Palakkad
Ext.P19 - True copy of certificate of registration of vehicle KL-9/C 2727 issued by the

Secretary, Regional Transport Authority, Palakkad
Ext.P20 - True copy of the permit in vehicle No KL 9/N 416 issued by the Secretary, Regional Transport Authority, Palakkad
Ext. P21 - True copy of GO(P)59/05 LDR dated 07.06.2005
Ext.P22 - True copy of GO (P) No 98/05/LBR dated 26.11.2005
Ext.P23 - True copy of the Kerala Motor Vehicles Taxation Amendment Act 2005 amending Section 4 of the Taxation Act.

[true copy]

WPC 10915 of 2006

Appendix

Petitioner's exhibits:

Ext.P1 - True copy of GO(P)No 98/2005/LBR dated 26.11.2005 issued by the Labour and Rehabilitation (H) Department, Government of Kerala

[true copy]

WPC 10959 OF 2006

Appendix
Petitioner's exhibits:
Ext.P1 - True copy of goods carriage permit of KL-13-5048
Ext.P2 - True copy of the permit of vehicle KL-09-L8595
Ext.P3 - True copy of permit of vehicle No KL-09-8687
Ext.P4 - True copy of permit of vehicle KL-9-N 9035
Ext.P5 - True copy of permit of vehicle No KL 09-N 9036
Ext.P6 - True copy of permit of vehicle No KL 09-N 5499
Ext.P7 - True copy of permit of vehicle No KL 09 N 7740
Ext.P8 - True copy of permit of vehicle No KL 09 N 7740
Ext.P9 - True copy of National Permit of vehicle No KL 09 N 7048
Ext.P10 - True copy of National Permit of vehicle No KL 09-7050
Ext.P11 - True copy of National Permit of vehicle No KL 09-N 7049
Ext.P12 - True copy of National Permit of vehicle No KL 09-M 8199
Ext.P13 - True copy of National Permit of vehicle No KL 9/M 8299
Ext.P14 - True copy of registration certificate of vehicle KL 8 V 6076
Ext.P15 - True copy of do. Of vehicle No KL9 B 6565
Ext.P16 - True copy of the Registration Certificate of vehicle No KL8/W 2030
Ext.P17 - True copy of R.C of vehicle No KL 5/Q 5336
Ext.P18 - True copy of registration certificate of vehicle No KL 09-L 1953
Ext.P19 - True copy of Registration Certificate of vehicle No KL 04/B 2662
Ext.P20 - True copy of Registration Certificate of vehicle No KL 08/X 5202
Ext.P21 - True copy of Registration Certificate of vehicle KL 8/A 4662
Ext.P22 - True copy of Registration Certificate of Vehicle No KCE 6903
Ext.P23 - True copy of Registration Certificate of vehicle KL 8R 3636
Ext.P24 - True copy of Registration Certificate of Vehicle No KL-9 J 2700
Ext. P25 - True copy of Registration Certificate of vehicle No KL 9/B 3301
Ext.P26 - True copy of Registration Certificate of Vehicle No KL 09/P 727
Ext.P27 - True copy of Registration Certificate of Vehicle No KL 09/4563 of 7th petitioner

Ext.P28 - True copy of route permit of 2nd petitioner's stage carriage.
Ext.P29 - True copy of notification GO (P) 59/05/LBR dated 7.6.2005
Ext.P30 - True copy of notification G.O.(P) 98/05/LBR dated 26.11.2005
Ext.P31 - True copy of Kerala Motor Vehicles Taxation (Amendment) Act 2005 amending Section 4 of the Taxation Act.
Ext.P32 - True copy of the Kerala Gazette Extra ordinary dated 7.6.2005

[true copy]

W.P.C. No 10067 of 2006

Appendix

Petitioner's exhibits:

Ext.P1 - True copy of amended Notification published in the Gazette dated 12.08.2005

[true copy]

W.P.C. No 11787 of 2006

Appendix

Petitioner's exhibits:

Ext.P1 - True copy of permit in respect of SC KL 8AC 2516 dt 22.3.05

Ext.P2 - True copy of permit in respect of SC KL 8AC 2754 dated 20.9.2005

Ext./P3 - True copy of permit in respect of sC KL 8 AE 6423 dated 17.12.2005

Ext.P4 - True copy of permit in respect of SC KL8 AH 1148 dated 28.2.2006

Ext.P5 - True copy of request dated 15.3.2006

Ext.P6 - True copy of proceedings dated 15.3.2006

[true copy]

W.P.C. NO 6063 OF 2006

Appendix

Petitioner's exhibits:

Ext.P1 - True copy of notification G.O(P) No 59/05/LBR dated 7.6.2005

Ext.P2 - True copy of notification No G.O(P)No 98/05/LBR dated 26.11.2005

Ext.P3 - True copy of Kerala Motor Vehicles Taxation (Amendment) Act 2005 dated 12.8.2005

[true copy]

W.P.C. No 10111 of 2006

Appendix

Petitioner's exhibits:

Ext.P1 - True copy of Kerala Motor Transport Workers Welfare Fund (Amendment) Act 2005

Ext.P2 - True copy of Motor Vehicle Taxation (Amendment) Act 2005 as published in Kerala Law Journal

Ext.P3 - True copy of Kerala Motor Transport Workers Welfare Fund (Second Amendment) Scheme, 2005

[true copy]

W.P.C. No 4989 of 2006

Appendix

Petitioner's Exhibits:

Ext.P1 - True copy of above mentioned Act 23 of 2005 (Motor Transport Workers Welfare Fund (Amendment) Act 2005 dated 13.8.2005

[true copy]

W.P.C. No 9971 of 2006

Appendix

Ext.P1 - True copy of letter issued by Parle dated 30.6.2001
Ext.P2 - True copy of Notice issued by petitioner dated 3.7.2001
Ext.P3 - True copy of letter dated 8.5.2002 to the petitioner association by Koyippally Agencies
Ext.P4 - True copy of notice dated 7.1.2003 of the petitioner Association
Ext.P5 - True copy of letter of Euraka Forbes dated 19.2.2003
Ext.P6 - True copy of notice dated 10.01.2004 of the petitioner Association
Ext.P7 - True copy of notice dated 15.12.2005 of the petitioner Association
Ext.P8 - True copy of letter dated 28.01.2006 of State Committee of AKDA
Ext.P9 - True copy of notice dated 31.1.2006 by AKDA
Ext.P10 - True copy of letter of Gen. Secretary of AKDA to all Secretaries of District Unit
Ext.P11 - True copy of the Motor Transport Workers Welfare Fund (Amendment) Act
Ext.P12 - True copy of Kerala Motor Transport Workers Welfare Fund (2nd Amendment) Scheme 2005
Ext.P13 - True copy of Motor Vehicles Taxation (Amendment) Act 2005

[true copy]

WPC 10636/2006

Appendix

Petitioner's exhibits:

Ext.P1 - True copy of partnership deed dated 10.1.97

Ext.P2 - True copy of partnership deed dated 3/2004

Ext.P3 - True copy of Enquiry Notice issued by 4th respondent dated 30.01.2006

Ext.P4 - True copy of above mentioned Act 23 of 2005

[true copy]

WPC 10969/06
Appendix

Petitioner's exhibits:
Ext. P1 - True copy of registration certificate of petitioner's car in Reg No KRV 4488
Ext.P2 - True copy of Motor Vehicles Taxation (Amendment) Act, 2005 (Kerala)
Ext.P3 - True copy of demand draft dated 30.03.2006 bearing No 695009022 for Rs 1,040/- remitted by the petitioner.

[true copy]

WPC 11362 OF 20065
Appendix

Petitioner's exhibits:

Ext.P1 - True copy of Gazette Notification dated 12/08/2005
Ext.P2 - True copy of certificate issued from the office of the 4th respondent dated 29.03.2006 and 6.4.2006

[true copy]

WPC No 12546 of 2006

Appendix
Petitioner's exhibits:

Ext.P1 - True copy of notification G.O(P) No 59/05/LBR dated 7.6.2005
Ext.P2 - True copy of notification No G.O.(P) No 98/05/LBR dated 26.11.2005
Ext.P3 - True copy of Kerala Motor Vehicles Taxation (Amendment) Act 2005 dated 12.8.2005
Ext.P4 - True copy of interim order in WP(C) No 6063/06 dated 2.5.2006

[true copy]

WPC 12769/06

Appendix

Petitioner's exhibits:

Ext.P1 - True copy of partnership deed dated 1.6.2001

[true copy]

W.P.C. No 19351 of 2006

Appendix
Petitioner's exhibits:

Ext.P1 - True copy of notification G.O(P) No 59/o5/LBR dated 7.6.2005
Ext.P2 - True copy of notification GO(P) No 98/05/LBR dated 26.11.2005
Ext.P3 - True copy of Kerala Motor Vehicles Taxation (Amendment) Act 20065 dated 12.8.2005

Ext.P4 - True copy of order W.PC. No 6063/06 dated 2.5.2006

[true copy]

W.P.C. No 2999 of 2006

Appendix

Petitioner's exhibits:

Ext.P1 - True copy of Motor Vehicles Workers Welfare Fund (Amendment) Act 2005 and the Scheme dated 7.6.2005 issued by the first respondent.

[true copy]

W.P.C. NO 3132 OF 2006

Appendix
Petitioner's exhibits:
Ext.P1 - True copy of G.O.(P) No 59/2005/LBR dated 7.6.2005

Ext.P2 - True copy of GO(P)No 98/2005/LBR dated 26.11.2005

Ext.P3 - True copy of Act 24 of 2005

[true copy]

WPC 26596 of 2005

Appendix
Petitioner's exhibits:
Ext.P1 - True copy of Motor Transport Workers Welfare Fund (Amendment) Act 2005 and the Scheme dated 7.6.2005 issued by the first respondent.

[true copy]

WPC 26598 of 2005

Appendix

Petitioner's exhibits:

Ext.P1 - True copy of Motor Vehicles Workers Welfare Fund (Amendment) Act 2005

[true copy)

W.P.C. No 27734 of 2005

Appendix

Petitioner's exhibits:

Ext.P1 - True copy of Motor Vehicles Workers Welfare Fund (Amendment) Act 2005 and the Scheme dated 7.6.2005 issued by the first respondent.

[true copy]

W.P.C. No 3905 of 2007

Appendix

Petitioner's exhibits:

Ext.P1 - True copy of amendment of the Kerala Motor Transport Workers Welfare fund

[true copy]